

Message Text

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ORIGIN L-03

INFO OCT-01 AF-10 ADP-00 AID-20 RSC-01 /035 R

DRAFTED BY L/ AF: BKHUFFMAN; JR

6/14/73 X20849

APPROVED BY AF/ E: WBCOOTE

AID/ GC/ AFR: TAMUNTSINGER(INFO)

AF/ E: BCROGERS

AID/ AFR/ ESA: JKNOLL

AID/ AFR/ DS: SKLEIN

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P 142152 Z JUN 73

FM SECSTATE WASHDC

TO AMEMBASSY MOGADISCIO PRIORITY

INFO AMEMBASSY NAIROBI PRIORITY

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E. O. 11652: N/ A

TAGS: EAID, OGEN, SO, US

SUBJECT: AMELCO

REF: (A) MOGADISCIO 855

(B) STATE 111557

NAIROBI FOR REDSO

1. WE HAVE NOT YET RECEIVED COPY OF L/ C. HOWEVER WE
NOTE STATEMENTS IN SWORN AFFIDAVITS IN AMELCO' S MOTION
PAPERS THAT L/ C HAD SPECIFIC EXPIRATION DATE, MAY 15
AND SPECIFIC CONDITION THAT DRAFT UPON L/ C ACCOMPANIED
BY SWORN STATEMENT THAT AMOUNT DRAWN REPRESENT UNPAID
INDEBTEDNESS DUE SCB BY AMELCO.

2. BANK OF HAWAII VICE PRESIDENT AFFIRMED FOREGOING
TO L/ AF BY TELEPHONE AND STATED SCB HAD FAILED TO PRESENT
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DRAFT UPON DATE SPECIFIED IN L/ C. BANK OF HAWAII ALSO TAKES POSITION ITS ACTIONS IN NOT HONORING L/ C AT THIS TIME ARE LEGAL AND REFLECT NORMAL INTERNATIONAL BANKING PRACTICE.

3. L/ AF AND ATTORNEYS AT TREASURY AND EXIM- BANK (WHOSE VIEWS SOLICITED INFORMALLY) BELIEVE IT LEGALLY JUSTIFIED

ABSENT EXTRAORDINARY CIRCUMSTANCES, FOR BANK TO DISHONOR L/ C WHERE DRAFT PRESENTED AFTER SPECIFIC EXPIRATION DATE AND FAILED MEET CONDITION SPECIFIED IN L/ C.

4. PRELIMINARY REVIEW UNIFORM COMMERCIAL CODE WHICH HAWAII HAS ADOPTED INDICATES FOLLOWING:

(A) PRESENTMENT MAY BE MADE BY MAIL (IN WHICH CASE TIME OF PRESENTMENT DETERMINED BY TIME OF RECEIPT OF MAIL); THROUGH CLEARING HOUSE; OR AT PLACE OF PAYMENT SPECIFIED IN INSTRUMENT;

(B) WHERE INSTRUMENT SHOWS DATE ON WHICH IT IS PAYABLE, PRESENTMENT FOR PAYMENT IS DUE ON THAT DATE (AND NOT BEFORE OR AFTER IT);

(C) WHERE WITHOUT EXCUSE PRESENTMENT IS DELAYED BEYOND TIME SPECIFIED, DRAWER OR ACCEPTER (BANK) MAY BE DISCHARGED;

(D) DELAY IN PRESENTMENT IS EXCUSED WHEN PARTY IS WITHOUT NOTICE THAT IT IS DUE OR DELAY IS CAUSED BY CIRCUMSTANCES BEYOND ITS CONTROL AND PARTY EXERCISES REASONABLE DILIGENCE AFTER CAUSE OF DELAY CEASES TO OPERATE.

5. IF SCB' S PRESENTMENT DELAYED, ONLY U. S. LAW FIRM COMPETENT ADVISE SCB ON ITS LEGAL REMEDIES OR ALTERNATIVES, IF ANY. LAW FIRM EXPERIENCED IN INTERNATIONAL BANKING MATTERS COULD ADVISE SCB WHETHER CIRCUMSTANCES SURROUNDING DELAY IN PRESENTMENT CONSTITUTED LEGAL EXCUSE JUSTIFYING EXPENSE OF BRINGING ACTION AGAINST BANK OF HAWAII. USG LAWYERS NEITHER COMPETENT NOR LEGALLY LIMITED OFFICIAL USE

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PERMITTED PROVIDE THIS TYPE ADVICE. SINCE LAWS GOVERNING COMMERCIAL PAPER PLACE EMPHASIS UPON DILIGENCE IN PURSUING CLAIM FURTHER DELAY AT THIS TIME BY GSDR IN RETENTION OF COUNSEL TO ANALYSE LEGAL RIGHTS MIGHT PREJUDICE ITS CASE.

6. LINKAGE OF L/ C QUESTION AND OTHER LEGAL PROBLEMS

NOT CREATED BY DEPARTMENT AND AID BUT BY BANK OF
HAWAII POSITION THAT IT CAN HONOR DRAFT ONLY IF
AMELCO WAIVES DEFECTS. AMELCO, IN ALL LIKELIHOOD,
NOT DISPOSED TO DO SO IN ABSENCE RESOLUTION OTHER ISSUES.

7. SUGGESTION GSDR CONSIDER RETAINING FIRM OUTSIDE
HAWAII, PREFERABLY WASHINGTON, BASED ON THREE
CONSIDERATIONS:

(A) FIRM OUTSIDE HAWAII MIGHT BE BETTER ABLE
EVALUATE ADVANTAGES AND DISADVANTAGES SCB BRINGING
ACTION IN HAWAII COURT WHICH WOULD CONSTITUTE
SUBMISSION TO HAWAII JURISDICTION FOR PURPOSE OF
POSSIBLE COUNTERCLAIMS. (I. E, NON- HAWAII FIRM WOULD
NOT HAVE POSSIBLE VESTED INTEREST IN BRINGING ACTION
IN HAWAII WHERE AMELCO MIGHT BE VIEWED MORE FAVORABLY
THAN ELSEWHERE.)

(B) IF PRESENTMENT WAS DEFECTIVE RESULTING IN
LINKING OF L/ C AND PROJECT LEGAL ISSUES, LEGAL ANALYSIS
OF ENTIRE PROBLEM WOULD APPEAR MERITED.

(C) WASHINGTON FIRM COULD BENEFIT FROM EASIER
COMMUNICATIONS WITH DEPARTMENT AND MOGADISCIO AND
MIGHT BE ABLE ASSIST IN COUNTERING POSSIBLE POLITICAL
PRESSURES BY AMELCO.

8. IN RETROSPECT IT APPEARS AMELCO FEARED PROPER
PRESENTMENT ON MAY 15 AND THUS GOT TEMPORARY RETAINING
ORDER WHICH LATER LIFTED WHEN LATE AND DEFECTIVE
PRESENTMENT PROVIDED AMELCO LEGAL BASIS FOR REQUIRING
BANK TO DECLINE PAYMENT ABSENT AMELCO WAIVER.
ACCORDINGLY, LAWSUIT MAY ULTIMATELY PROVE TO HAVE BEEN
RED HERRING.

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*** Current Classification *** LIMITED OFFICIAL USE

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